

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE GARCIA,

Plaintiff,

08-CIV-1270

(SCR)

- against -

CITY OF MOUNT VERNON, CITY OF MOUNT
VERNON POLICE DEPARTMENT,
and INDIVIDUALS OF THE CITY OF MOUNT
VERNON POLICE DEPARTMENT

Defendants.

**AFFIRMATION IN
OPPOSITION TO
MOTION FOR
JUDGMENT ON THE
PLEADINGS OR
ALTERNATELY FOR
SUMMARY JUDGMENT**

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Cheryl K. Beece, Esq., an attorney duly admitted to practice before the Courts of
the State of New York, hereby affirms the following under penalties of perjury:

1. I am a member of the firm of Parisi & Patti, LLP, attorneys for Plaintiff Jose Garcia, in the foregoing action. I am fully familiar with the facts and circumstances of the present action based on my review of the file maintained in our offices and on conversations with Plaintiff.
2. I submit this Affirmation in Opposition and the accompanying Memorandum of Law in Opposition to Defendants' Notice of Motion for Judgment on the Pleadings or Alternatively for Summary Judgment, electronically submitted on or about June 21, 2008.
3. Plaintiff has yet to conduct discovery at this early stage of the matter herein, and so does not have the advantage of depositions of any of the Defendants, or of any deposition of the Plaintiff at which counsel was allowed to conduct any cross-examination.
4. Plaintiff objects to the use of the 50-H hearing deposition testimony of Plaintiff as

part of the pleadings herein, as more fully detailed in the annexed Memorandum of Law.

5. Plaintiff is hampered in the opposition of this motion by evidence within the exclusive knowledge of Defendants, including but not limited to any internal depositions or reports that may have been given by the officers; the service records, disciplinary reports and commendations of the officers; and the supervisory policies and training programs relative to the officers through the City of Mount Vernon Police Department and the City of Mount Vernon. Until such information becomes available to Plaintiff, any motion to dismiss or for summary judgment on the pleadings herein is premature.

WHEREFORE, Plaintiff respectfully demands that the motion of Defendants to dismiss, or in the alternative to grant summary judgment, be denied, and for any other relief the Court deems just, proper or equitable.

Dated: White Plains, NY
July 11, 2008

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To: Nichelle Johnson
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Mount Vernon, NY 10550
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To: Nichelle Johnson, Esq.
Assistant Corporation Counsel
City of Mount Vernon Department of Law
Attorneys for Defendants
One Roosevelt Square
Mount Vernon, NY 10550

Dated: July 11, 2008

The undersigned attorney certifies pursuant to 22 NYCRR 1301.1 that to the best of his/her knowledge, information and belief, the annexed document is not frivolous.

Cheryl K. Beece, Esq.